# In the Supreme Court of the United States

OCTOBER TERM, 1970

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No. 240

J. NORMAN JONES, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

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## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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After a jury trial in the United States District Court for the Central District of California, petitioner was convicted on one count of conspiracy and five substantive counts of mail fraud (18 U.S.C. 371 and 1341) in connection with a check kiting scheme involving bank accounts maintained by one Edward Temple in Los Angeles and Minneapolis. He was sentenced, subject to the parole eligibility provisions of 18 U.S.C. 4208(a)(2), to concurrent terms of imprisonment of not less than eighteen months nor more

than five years. The court of appeals affirmed on April 7, 1970 (Pet. Ex. A 1-15). The petition for a writ of certiorari was not filed until June 9, 1970 and is out of time under Rule 22(2) of the Rules of this Court.

The evidence showed in outline that Temple would deposit checks drawn on the Minneapolis bank into his account at the Hollywood Bank in Los Angeles and thereby have the funds available for immediate use. The checks would take several days to be transmitted from the Hollywood Bank to the Minneapolis bank for payment; Temple would deposit into the Minneapolis bank checks drawn on the Hollywood Bank for which he would receive immediate credit, thereby avoiding any of the checks being returned for insufficient funds (Tr. 673-675). Petitioner's involvement stemmed from the fact that he was president of the Hollywood Bank. The government's evidence enabled the jury to find that, although petitioner was aware of the overdrafts in Temple's account, he at no time disclosed this on the monthly return item sheet presented by him to the board of directors (Tr. 232-236, 1842-1876). Petitioner testified that he had no knowledge of the kiting scheme. Temple, however, testified that he paid petitioner $5,000 on one occasion for his services in securing a loan incident to the scheme (Tr. 598, 869-872, 878-879). In addition the evidence showed that petitioner in February 1966 advised Temple that he could alleviate the day to day pressure Temple was then experiencing in depositing certain checks with the Hollywood Bank which were not being honored

by making a banking arrangement that would provide time to cover the checks (Tr. 520-526). Petitioner was shown to be directly responsible for enabling Temple to obtain credit at the Hollywood Bank on at least six checks totalling nearly $70,000 (Tr. 1739-1750). When the kiting scheme was uncovered in January 1967 the resulting loss was nearly $850,000 to the Minneapolis bank and more than $200,000 to the Hollywood Bank. The total volume of worthless checks transmitted during the scheme was approximately $16,000,000 involving some nine hundred checks (Tr. 1330-1331, 437, 1267, 1335).

The lengthy petition alleges various errors relating to the conduct of the trial judge and prosecutor, the instructions, and the charging of conspiracy and substantive offenses arising out of the same incidents. These contentions are adequately dealt with and properly rejected in the opinion of the court of appeals (Pet. Ex. A), on which we rely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

JULY 1970.

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CERTIORARI DENIED

N.C.R.